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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Policies and Rules for Licensing) RM-7985
Fallow 800 MHz Specialized Mobile)
Radio Spectrum Through a)
Competitive Bidding Process)

To: The Commission

ORIGINAL
FILE

COMMENTS OF CENTEL CORPORATION

Centel Corporation ("Centel") hereby submits its comments on the above-captioned petition for rulemaking filed by Fleet Call, Inc. ("Fleet Call"). In its Petition, Fleet Call proposes the use of competitive bidding processes to license "innovator blocks" of 800 MHz Specialized Mobile Radio ("SMR") spectrum. As detailed below, Centel believes that Fleet Call's proposal highlights the pressing need for the Commission to remove artificial regulatory barriers to telephone company and cellular carrier participation in the SMR marketplace.

I. SUMMARY

Today, the Commission's Rules prohibit telephone company control of SMRs and bar cellular carriers from using their spectrum to offer private land mobile radio services. The Commission has just terminated a proceeding to remove the

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restriction on telephone ownership of SMRs.¹ The Commission also has before it a petition for rulemaking concerning cellular carrier flexibility to compete with SMRs.² However, no schedule for action has been set in that case.

In this context, Fleet Call's Petition raises important public interest concerns. First, auctions of SMR spectrum should not proceed until rule changes are implemented to allow telephone companies, which would be among the best qualified bidders, to hold SMR authorizations. Second, Fleet Call's explicit intention to use SMR spectrum to replicate cellular services underscores the need for prompt action to allow cellular carriers to compete in the SMR marketplace. These basic points are detailed below.

II. TELEPHONE COMPANIES SHOULD BE ALLOWED TO PARTICIPATE IN SMR SERVICES

An essential element of Fleet Call's proposal is to license "innovator blocks" of SMR spectrum using a competitive bidding, or auction, process. In order for the Commission to implement Fleet Call's proposal, however,

¹ See Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Band, PR Docket No. 86-3, FCC 92-270 (July 15, 1992) (Order).

² Telocator, Petition for Rulemaking for Amendment of the Commission's Rules To Authorize Cellular Carriers to Offer Auxiliary and Non-Common Carrier Services, RM-7823 (filed Sept. 4, 1991).

Congress would need to amend the Communications Act specifically to permit this licensing method.³ Such action cannot be presumed, and accordingly, further action on Fleet Call's Petition should be deferred until this condition precedent materializes.

The competitive bidding proposal, however, raises some immediate public policy concerns. Today, U.S. telephone companies such as Centel are banned from owning SMR licenses.⁴ Consequently, auctions -- without a rule change to allow wireline exchange carrier eligibility -- would exclude many of the best qualified bidders. This preclusion is illogical. If not removed, aliens could bid for the proposed SMR innovator blocks, but U.S. telephone companies could not.⁵ Similarly, inexperienced applicants could bid but experienced providers of exchange telecommunications services would be barred.

Due to the uncertainty that Congress will empower the Commission to use auctions, and the serious public policy issues that auctions would raise aside from the telco ownership bar, Centel urges the Commission to hold Fleet

³ See H.R. CONF. REP. No. 765, 97th Cong., 2d Sess. 53 reprinted in 1982 U.S. CODE CONG. & ADMIN. NEWS 2261, 2297.

⁴ 47 C.F.R. § 90.603(c) (1991).

⁵ Although 47 C.F.R. § 90.115 prohibits the granting of private land mobile radio licenses to foreign governments or their representatives, it does not -- unlike 47 U.S.C. § 310(b) -- place limits on ownership by foreign corporations.

Call's Petition in abeyance until enabling legislation is passed. In the interim, the Commission should promptly re-issue its proposal to allow telephone companies to own SMR systems.⁶

III. FLEET CALL'S PROPOSAL UNDERSCORES THE NEED FOR PROMPT COMMISSION ACTION TO ALLOW CELLULAR CARRIERS TO COMPETE WITH SMRS PROVIDERS

In the current regulatory environment, private and common carrier services are subject to different requirements. Common carriers must comply with a host of regulatory restrictions that are inapplicable to their private carrier counterparts. For example, common carriers are subject to entry and rate regulation in many states. Private carriers, on the other hand, are specifically exempted from state regulation.⁷ Common carriers must also comply with statutory requirements mandating reasonable rates, non-discriminatory service offerings (to both end-users and resellers), interconnection with other carriers, and provision of service upon reasonable request.⁸ Private

⁶ The continued applicability of the wireline ownership bar is particularly ironic given the Commission's advocacy for removing statutory barriers to entry, such as the MFJ restrictions imposed on the RBOCs. There is no statutory source for Section 90.603(c) of the Rules; it is simply an unnecessary relic from the early days of SMRS.

⁷ 47 U.S.C. § 332(c)(3) (1991).

⁸ 47 U.S.C. §§ 201, 202 (1991).

carriers, in contrast, are not subject to such restrictions. Last, but not least, private carriers can offer dispatch service while common carriers are barred from offering such services.

As a result of these regulatory disparities, private carriers enjoy significant advantages in the marketplace. Because they are not subject to state regulation, private carriers do not experience delays in service or incur the sometimes substantial monetary costs necessary to gain state approval. Further, because private carriers are not required to serve all customers on the same terms, they may choose to enter into only the most profitable arrangements. Finally, private carriers are not subject to rate regulation and accordingly have more flexibility to maximize their profits.

These incongruities would be exacerbated by Fleet Call's proposal. By attempting to effect additional functional similarities between private and common carrier mobile services, Fleet Call would further disadvantage cellular carriers and distort competition in the marketplace. While Fleet Call previously disavowed any intent for "enhanced" SMRs ("ESMRs") to duplicate cellular services, its current petition unequivocally pursues such a goal. For example, Fleet Call states that it plans to offer "nationwide roaming capabilities" and "universal coverage" to SMR users

throughout wide regional areas.⁹ Fleet Call asserts that these capabilities would allow SMR systems "to offer the capacity, quality, and diverse services demanded by today's users in a competitive wireless communications industry,"¹⁰ and provide "service competitive with other wireless communications providers."¹¹

Given the ambitious goal of Fleet Call's Petition -- to establish a wireless infrastructure controlled largely by Fleet Call and its consortium¹² -- ESMRs would be free to offer nationwide cellular services while cellular carriers would remain barred from providing SMR services. Consequently, before the Commission moves forward with Fleet Call's Petition, these one-sided limitations must be rectified. Specifically, the Commission should expeditiously implement the rule changes proposed in Telocator's pending

⁹ Petition at 13.

¹⁰ Id. at 12-13.

¹¹ Id. at 19. Fleet Call fails to note that the Commission has proposed to eliminate end user licensing for SMRs. See Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, PR Docket No. 92-79, FCC 92-172 (May 5, 1992) (Notice of Proposed Rulemaking). In combination, this proposal and the instant rulemaking request would serve to eliminate any functional distinction between ESMR and cellular.

¹² Petition at 3-5.

flexible cellular petition for rulemaking.¹³ Such rule modifications would promote full and fair competition in the mobile communications marketplace between cellular carriers, SMRs, and ESMR operators.

IV. CONCLUSION

For the foregoing reasons, telephone and cellular companies should not be artificially barred from participating in the SMR marketplace. These significant legal and public policy concerns must be addressed before further consideration of Fleet Call's Petition.

Respectfully submitted,

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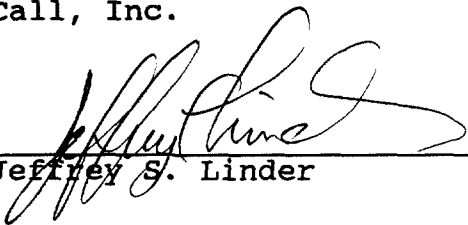
¹³ In contrast to the instant proposal, the Telocator Petition is an important effort to eliminate some of these existing regulatory disparities by enabling cellular carriers to offer auxiliary and non-common carrier mobile services within their cellular frequencies.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 1992, I caused copies of the foregoing "Comments" to be mailed via first-class postage prepaid mail to the following:

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